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In The

# Supreme Court of the United States

October Term, 1997

ROBERT D. SPRAGUE, *et al.*,

*Petitioners,*

— *vs.*

GENERAL MOTORS CORPORATION,

*Respondent.*

*On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit*

## BRIEF OF *AMICI CURIAE* DONALD ARMBRUSTER, *ET AL.* AND THE REPUBLIC STEEL SALARIED RETIREES ASSOCIATION IN SUPPORT OF PETITIONERS

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## INTERESTS OF THE *AMICI CURIAE*[1]

*Amici* Donald Armbruster, et al., are long-service former employees of a major industrial employer who are now litigants seeking relief for reduction and denial of medical benefits their employer represented would cover them after retirement for their and their spouses' lifetimes.[2] *Amici* Armbruster, et al., are representative of tens of thousands of retired employees in this country who have suffered reductions in retiree benefits after they retired, despite having been led by their employers to believe that the benefits for which they labored were secure. The problem they confront is not unique to retiree medical benefits, but relates to all benefits that are not governed by ERISA's bright line vesting rules. In addition, *amici* Armbruster, et al. have a special perspective on benefits practices and protections before and after enactment of ERISA due to the fact that several of them personally served as benefits executives and other company managers who were responsible for explaining retiree medical benefits to employees in their companies. In this capacity, they were fully informed about employer intentions, employee understandings of the benefits,

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1. Pursuant to Supreme Court Rule 37.6, *amici curiae* and their counsel disclose that no counsel for a party authored the brief in whole or in part, and that no person or entity, other than *amici*, their members or their counsel, have made a monetary contribution to the preparation or submission of the brief.

2. *Amici* Donald Armbruster, John Gustke, Robert Rawlings, William Varney, Robert Butler, and Maynard Brandt are individual named plaintiffs and proposed representatives of a class of former salaried employees of Fruehauf Corporation. *Armbruster, et al. v. K-H Corporation*, No. 97-CV- 75792 (E.D. Mich.). In a predecessor action, *amici* Armbruster, et al. were certified as representatives of a class seeking relief for benefits reductions and fiduciary misrepresentations. *See Fuller v. Fruehauf Trailer Corp.*, 168 F.R.D. 588 (E.D. Mich. 1996).

and the expected legal protections that would apply to these benefits should any dispute arise about them.

*Amicus* Republic Steel Salaried Retirees Association ("RSSRA") is a not-for-profit Ohio corporation composed of retired salaried employees of Republic Steel. The purpose of RSSRA is to protect the rights and interests of the Republic Steel retired salaried employees, particularly their rights and interests in insurance and pension benefits. RSSRA was involved in the dispute, and the resolution thereof, caused by LTV's reduction of health and life insurance benefits to its retirees and has a continued interest in judicial decisions and legislation related to post-retirement employer reductions of health, life and other welfare benefits.

As the experiences of *amici* demonstrate, the decision of the Sixth Circuit Court of Appeals in *Sprague v. General Motors Corp.*, 133 F.3d 388 (6th Cir. 1998) (*en banc*), severely impairs the rights of retired employees to valuable benefits promised to them by their employers, both before and at the time of their retirements. The *Sprague* decision effectively holds that misleading benefits promises that induce reasonable reliance by employees are not binding on employers, and that employers may invoke disclaimers that they did not clearly disclose to the employees. The decision thus contravenes the fundamental protective purposes of ERISA.[3]

## INTRODUCTION

*Amici* wish to bring to the Court's attention the stark contrast between the legal protections that were available to employees and retirees before enactment of ERISA and the severely diminished protections that now would apply under

3. The written consent of each party has been filed with the Clerk of the Court pursuant to Supreme Court Rule 37.3.

the decision below and other similarly-reasoned decisions. *Amici* respectfully urge that the decision below is contrary to ERISA's fundamental purpose of strengthening the legal protections available to employees and retirees to secure reasonably expected benefits and deterring abusive practices by employers that frustrate this statutory objective. As the Court has declared previously, courts should avoid interpretations of ERISA that afford less protection to employees and retirees than would have applied under the state law principles applicable before ERISA's enactment. Yet the decision below follows the opposite approach — replacing well-developed pre-ERISA state law protections with a regime under which reasonable benefits expectations can be frustrated and negated by hidden disclaimers and misleading representations. This reversal of position has occurred despite the repeated emphasis by the Congress and this Court to adhere to ERISA's fundamental protective purposes.

The ERISA statute has far-reaching affects on the daily lives of virtually every working man and woman in this country. The *Sprague* decision presents an exceptional opportunity for the Court to instruct and resolve the analytic disarray in the lower courts. *Amici* therefore strongly urge that the Court grant the Petition for Writ of Certiorari so that these matters of fundamental importance to employees, retirees, and employers can be definitively addressed.

## REASONS FOR GRANTING THE WRIT

### I.

### REVIEW OF THE DECISION BELOW IS NECESSARY TO RESOLVE INTER-CIRCUIT CONFLICTS AND RESTORE ADHERENCE TO THE FUNDAMENTAL PROTECTIVE PURPOSES OF ERISA.

The Petition for Writ of Certiorari demonstrates the inter-circuit conflicts and analytic disarray that prevails in the lower courts. The analytic disarray in the lower courts is in part the result of the relative infrequency with which this Court has had an opportunity to address application of the substantive protections of ERISA.

The Court has repeatedly emphasized ERISA's fundamental protective purposes. ERISA imposes "strict standards" on benefits plan administrators and other fiduciaries. *Central States, Southeast and Southwest Areas Pension Fund v. Central Transport, Inc.*, 472 U.S. 559, 570-72 & n.10 (1985). These standards were enacted "[t]o help fulfill ERISA's broadly protective purposes," which include safeguarding "the continuing well-being and security of millions of employees and their dependents." *John Hancock Mut. Life Ins. Co. v. Harris Trust & Sav. Bank*, 510 U.S. 86, 96 & n.5 (1993), *quoting* 29 U.S.C. § 1001(a). The Congress "repeatedly emphasized [the] purpose to protect contractually defined benefits." *Massachusetts Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 148 (1985). ERISA therefore includes "safeguards to prevent abuse and 'to completely secure the rights and expectations brought into being by this landmark legislation.' " *Ingersoll-Rand Co. v. McLendon*, 498 U.S. 133, 137 (1990) (quoting legislative history).

Consistent with the fundamental protective purposes of ERISA, the Court also has made clear that ERISA should be interpreted and applied to avoid results that "afford less protection to employees and their beneficiaries than they enjoyed before ERISA was enacted." *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 114 (1989). As explained in the legislative history, the courts are to develop a "federal common law of rights and obligations under ERISA-regulated plans." *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 101, 110 (1989); *Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. 1, 24 at n.26 (1983). In *Varity Corporation v. Howe*, 516 U.S. 489, 513 (1996), the Court again referred to the congressional statement of purpose and declared, "ERISA's basic purposes favor a reading of the third subsection [ERISA Section 502(a)(3)] that provides the plaintiffs with a remedy."

The decision below, and those others for which it stands as a vivid exemplar, contravene the Court's directives to adhere to the statute's fundamental protective purpose — safeguarding the benefits entitlements and income security of employees and retirees who have given years of service to their employers. As interpreted and applied in the court below, ERISA no longer preserves the level of protections that prevailed under pre-ERISA state law. Rather, ERISA has supplanted these state law protections with a regime under which long-promised retirement benefits can be evaded by means of sharp practices such as secret disclaimers and misleading drafting.

There is no doubt that the employer conduct at issue in this case would not have been permitted under the state law protections that prevailed at the time of ERISA's enactment. *Firestone* instructs that claims for promised benefits should be reviewed by a court "as it would have reviewed any other contract claim — by looking to the terms of the plan and other manifestations of the parties' intent." 489 U.S. at 112-13.

Whether analyzed pursuant to traditional contract principles, the doctrine of promissory estoppel, or the strict trust law fiduciary duties applicable to employers, courts applying pre-ERISA law would have enforced the right to the medical benefits General Motors promised to garner the loyal service of its employees and encourage their early retirement.

Many of these federal and state decisions applying pre-ERISA law relied on principles of consideration and contract. *See, e.g., Hoefel v. Atlas Tack Corp.*, 581 F.2d 1, 5-6 (1st Cir. 1978) ("even though the employer has reserved the right to amend or terminate the plan, once an employee, who accepted employment under such a plan, had complied with all the conditions entitling him to participate in such a plan, his rights become vested and the employer cannot divest the employee of his rights thereunder"); *Law Enforcement Labor Services, Inc. v. County of Mower*, 483 N.W. 2d 696, 701 (Minn. 1992) (retired beneficiaries' right to paid health care premiums for life "cannot be altered absent the retiree's express consent"); *Panto v. Moore Business Forms, Inc.*, 130 N.H. 730, 547 A.2d 260 (N.H. 1988) (promise of continuance of benefits for a period of time after being laid-off constituted unilateral contract, enforceable after employee completes service); *Blackwell v. International Union*, 9 Ohio App. 3d 179, 181-82, 458 N.E. 2d 1272, 1275-76 (Ohio Ct. App. 1983) (where employee repeatedly reassured of right to pension, offer of pension cannot be withdrawn after many years of employment); *Dulany Foods, Inc. v. C.M. Ayers*, 220 Va. 502, 512, 260 S.E. 2d 196, 202 (Va. 1979) (offer of severance pay plan not a gratuity, but "a unilateral contract offer which is accepted if the employee continues in the employment"); *Hart v. United Brotherhood of Carpenters & Joiners of America Local 626*, 352 A.2d 423, 426 (Del. Super. 1976) (promised pension benefits are "consideration for continued employee service and loyalty;" plan language to be construed in employee's favor); *Rose City*

*Transit Co. v. City of Portland*, 271 Ore. 588, 593, 533 P.2d 339, 342 (Ore. 1975) (pension or disability plan is offer which may be accepted by employee's continued employment, which "constitutes the underlying consideration for the promise"); *Ehrle v. Bank Bldg. & Equip. Corp. of America*, 530 S.W. 2d 482, 491-92 (Mo. App. 1975) (program of disability benefits became enforceable contract when employees acted in reliance thereon); *Frank v. Day's, Inc.*, 13 Wash. App. 401, 405, 535 P.2d 479, 482 (Wash. App. 1975) (a vested employee cannot have his pension benefits "altered to his detriment without corresponding benefit to him"); *Stopford v. Boonton Molding Co., Inc.*, 56 N.J. 169, 184, 265 A.2d 657, 664 (N.J. 1970) (employee's satisfaction of requirements for retirement benefits "constituted adequate consideration and brought about a vesting of the right to the lifetime benefits as prescribed by the plan"); *Sheehy v. Seilon, Inc.*, 10 Ohio St. 2d 242, 243, 227 N.E. 2d 229, 230 (Ohio 1967) ("through the inducements and actions of the employer these employees, upon retirement, acquired a vested right" to promised medical benefits); *Cantor v. Berkshire Life Ins. Co.*, 171 Ohio St. 405, 409, 171 N.E. 2d 518, 521 (Ohio 1960) (retirement plans "will give rise to contractual rights enforceable by the employee who has complied with all the conditions of the plan;" "[a] retirement program has become a basic part of an employee's remuneration . . . and a consideration flows to the employer"); *Bird v. Connecticut Power Co.*, 144 Conn. 456, 463, 133 A.2d 894, 897 (Conn. 1957) ("the employer may not defeat the employees' reasonable expectations of receiving the promised reward"); *West v. Hunt Foods, Inc.*, 101 Cal. App. 2d 597, 603, 225 P.2d 978, 982 (Cal. App. 1951) (employee who continues employment with knowledge of plan offered by employer may enforce right to a pension).

Other decisions rested on the doctrine of promissory estoppel. *See, e.g., Vastoler v. American Can Co.*, 700 F.2d 916, 918 (3d Cir. 1983) (promise to include past service in

pension benefit when asked to transfer from hourly to supervisory position enforced under principle of promissory estoppel); *Landro v. Glendenning Motorways, Inc.*, 625 F.2d 1344, 1353-55 (8th Cir. 1980) (ambiguity in pension plan construed against employer-drafter; principle of promissory estoppel required employer's promise of pension benefits to be enforced); *In re Matter of Erie Lackawanna Railway*, 548 F.2d 621, 627 (6th Cir. 1977) ("Clearly, under our economic system, an employer cannot offer a retirement system as an inducement to employment and, after an employee has accepted employment under such circumstances, withdraw or terminate the program after an employee has complied with all the conditions entitling him to retirement rights thereunder"); *Hurd v. Hutnik*, 419 F. Supp. 630, 637 (D. N.J. 1976) ("where employers have given other assurances of a lifetime pension and employees elect to retire in reliance thereon, the doctrine of promissory estoppel bars such a later termination of the fund"); *Christensen v. Minneapolis Municipal Employees Retirement Board*, 331 N.W. 2d 740, 749 (Minn. 1983) (under doctrine of promissory estoppel, after employee met original service requirement, promise of pension benefits cannot be amended to delay benefits until beneficiary reaches a prescribed age); *Feinberg v. The Pfeiffer Co.*, 322 S.W. 2d 163, 168-69 (Mo. App. 1959) (although promise of pension benefits did not consist of contractual obligation and plaintiff admitted that she would have continued to work regardless of promise of pension benefits, court, citing Section 90 Rest. of Contracts, illus. 2, found that retirement based on reliance of promise of pension precluded employer from later rescinding offer).[4]

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4. The conclusion that an employee or retiree has an enforceable contractual right to promised benefits inducing action or forbearance was so unexceptionable under pre-ERISA law that the *Restatement (Second) of Contracts* set forth this Illustration:

(Cont'd)

Still other decisions invoked the law of trusts and fiduciaries to require full and accurate disclosure of benefits information and to preclude employer invocation of undisclosed terms. *See, e.g., Carlsen v. Masters, Mates & Pilots Pension Plan Trust*, 80 N.J. 334, 341, 403 A.2d 880, 884 (N.J. 1979) (adverse disqualifying rule "should have been disclosed explicitly and unmistakably"); *Erion v. Timken Co.*, 52 Ohio App. 2d 123, 132, 368 N.E. 2d 312, 317 (Ohio App. 1976) (employer had fiduciary duty to bring pertinent points about benefits to

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(Cont'd)

> A has been employed by B for 40 years. B promises to pay A a pension of $200 per month when A retires. A retires and forbears to work elsewhere for several years while B pays the pension. B's promise is binding.

*Restatement (Second) of Contracts*, § 90, cmt. b, illus. 4 (1979). According to the Reporter's Note, the illustration is based on *Feinberg v. Pfeiffer Co.*, 322 S.W. 2d 163 (Mo. App. 1959).

Even without resort to the doctrine of promissory estoppel, familiar contract principles governing "manifestations of the parties' intent", *Firestone*, likewise would direct enforcement of the promise to pay medical benefits. Where the parties have attached different meanings to a promise,

> it is interpreted in accordance with the meaning attached by one of them if at the time the agreement was made (b) that party [the employee] had no reason to know of any different meaning attached by the other [the employer], and the other had reason to know the meaning attached by the first party.

*Restatement (Second) of Contracts*, § 201(2)(b) ("Whose Meaning Prevails") (1979); *see also Corbin on Contracts*, 1951, § 538 at 61. This is "hornbook contract law." *United States v. Stuart*, 489 U.S. 353, 367 at n.7 (1989) (quoting same section of Restatement).

attention of employees, even if no specific questions posed by employees); *Moch v. Durkin*, 31 A.D. 2d 995, 297 N.Y.S. 2d 865, 867 (N.Y. App. 1969) (plan fiduciaries had "affirmative duty" to notify employees about plan procedures); *Branch v. White*, 99 N.J. Super. 295, 307, 239 A.2d 665, 671 (N.J. Super. 1968) (plan fiduciaries "under a duty to fully inform the beneficiaries of the trust of all facts relating to the subject matter of the trust which were essential for the protection of the beneficiaries' interests"); *Davilla v. Court Employment Project, Inc.*, 86 Misc. 2d 552, 555-56, 383 N.Y.S. 2d 140, 142 (N.Y. Kings County 1976) (employer may not avoid liability for benefits on "theory that plaintiff is bound by something he has no notice of and which is more restrictive than the notice actually given him").

Finally, courts adopted rules of construction mandating that benefits promises be construed most strongly in favor of employees. *See, e.g., Paddock Pool Co. v. Monseur*, 23 Ariz. App. 451, 453, 533 P.2d 1188, 1190 (Ariz. App. 1975); *Anger v. Bender*, 31 Ill. App. 3d 877, 880, 335 N.E. 2d 122, 125 (Ill. App. 1975); *Elby v. Livernois Engrg. Co.*, 37 Mich. App. 252, 253, 194 N.W. 2d 429, 430 (Mich. App. 1971); *Frietzsche v. First Western Bank & Trust Co.*, 168 Cal. App. 2d 705, 707, 336 P.2d 589, 590 (Cal. App. 1959); *Forrish v. Kennedy*, 377 Pa. 370, 376, 105 A.2d 67, 70 (Pa. 1954); *Psutka v. Michigan Alkali Co.*, 274 Mich. 318, 320, 264 N.W. 385, 386 (Mich. 1936) (death benefit plan's ambiguities are to be construed against employer; provision in plan allowing employer to change benefits not applicable to employees or their dependents who are receiving benefits).

Commentators have also noted that there was a well-developed body of protective state law in existence at the time of ERISA's enactment. *See* C. Fisk, *Lochner Redux: The Renaissance of Laissez-Faire Contract in the Federal Common*

*Law of Employee Benefits*, 56 Ohio St. L. J. 153, 230-34 (1995); G. Flint, *ERISA: Extracontractual Damages Mandated for Benefit Claims Actions*, 36 Ariz. L. Rev. 611, 649-56 (1994); W. Payne, *Lawsuits Challenging Termination or Modification of Retiree Welfare Benefits: A Plaintiffs' Perspective*, 10 The Labor Lawyer 91, 93-97 (1994).

The Court has repeatedly noted the general guiding principles of ERISA interpretation and enforcement, including the charge to be at least as protective as the pre-ERISA protections discussed above. But what is the actual status of enforcement of ERISA's "broadly protective purposes" in this, its 25th year? Under the *Sprague* decision, courts will provide no remedy to employees who gave years of service to their employer and retired in reliance on promises of valuable medical benefits that they reasonably expected to be secure. Under the lower court's application of ERISA, fundamental benefits rights can be frustrated by hidden disclaimers in documents never disclosed to employees, and benefits can be misrepresented in order to retain and later retire thousands of employees. Although this type of conduct would "create[ ] liability even among strangers," *Varity*, 516 U.S. at 506, and General Motors would not tolerate it in its own commercial dealings, the lower court's misapplication of ERISA permits the company to escape its ERISA fiduciary and contractual responsibilities and creates a safe harbor for this conduct. Under pre-ERISA law, this outcome would be inconceivable. It is not the result intended by ERISA.

## CONCLUSION

Without intervention by the Court, the decision in *Sprague* will be heralded and followed in the lower courts as authorizing a decisional approach that is contrary to ERISA's remedial goals. For the foregoing reasons, *amici curiae* support and respectfully urge the Court to grant the petition for certiorari.

Respectfully submitted,

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